

Mooljee Lukhmidas Vs. S.M. Kapadia

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Court : Mumbai

Decided On : Dec-13-2005

Reported in : 2006(3)ALLMR52; 2006(6)BomCR443

Judge : Bhosale D.B., J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17

Appeal No. : Writ Petition No. 157 of 1998

Appellant : Mooljee Lukhmidas

Respondent : S.M. Kapadia

Advocate for Def. : None

Advocate for Pet/Ap. : R.A. Thorat, Adv.

Judgement :

Bhosale D.B., J.

1. Heard the learned Counsel for the petitioner. None appears for the respondent.
2. By this petition, the petitioner has impugned the judgment and order dated 20.12.1997 rendered in Interim Application No. 5631 of 1997 in RAE & R. Suit No. 3521 of 1984, by which the Interim Application filed by the respondent-defendant under Order 6, Rule 17 of the Code of Civil Procedure seeking permission to

amend the written statement as per the Schedule was allowed.

3. The impugned order was challenged solely on the ground that the defendant by way of an amendment has not only changed completely the case made in the written statement but has withdrawn the admission made therein. My attention was drawn to paragraph 1 of the Plaint wherein the petitioner-plaintiff has categorically stated that the respondent-defendant is a monthly tenant of the plaintiff in respect of 'residential premises' being Room No. 30 on the 2nd floor of the building. In reply to the first paragraph of the plaint, the defendant has simply stated in paragraph 1 of the written statement that he admits the facts mentioned therein. Even in rest of the written statement nowhere the defendant states that the suit premises was let out for composite purpose viz. residential and commercial. As a matter of fact, in paragraph 3 of the written statement, he has specifically denied to have changed user of the premises as alleged by the plaintiff in paragraph 3 of the plaint. In paragraph 3 of the plaint, the plaintiff has expressed an apprehension that the defendant may change user from residential to commercial. It is thus clear that a specific case made by the defendant in the written statement is that the suit premises was let out for residential purpose and he does not intend to change the user from residential to commercial/business. However, in the proposed amendment, the defendant in paragraphs 1 to 4 and 6 of the Schedule has stated that the premises was let out not only for residential purpose but it was let out for composite purpose and the defendant, in fact, was using the same for commercial as well as residential purpose. Under Order 6, Rule 17 of the Code of Civil Procedure, powers of the Court are wide enough to allow the parties to amend the pleadings as long as such amendment does not cause injustice to other party and/or cause him injury which could not be compensated in costs. It is well settled that inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment of the pleadings. Admission or withdrawal of admission cannot be rendered nugatory by allowing the amendment causing serious prejudice or injury to the other side. Keeping this in view, in my opinion, the amendments sought in paragraphs 1 to 4 and 6 amount to withdrawal of the admission as also it changes the very character of the defence disclosed in the written statement. It is against this backdrop, it would not be possible to allow such

amendment. In the circumstances, the amendment sought in paragraph Nos. 1 to 4 and 6 of the Schedule is rejected. In so far as the amendment as prayed in paragraph 5 of the Schedule is allowed. The defendant to carry out the said amendment within eight weeks from the date of receipt of this order, failing which the trial Court to proceed with the suit without amendment. It is open for the defendant to raise an issue of limitation, if so desired, during the course of hearing before the trial Court. The writ petition is partly allowed. The impugned order in so far as allowing the amendment prayed for in paragraphs 1 to 4 and 6 in the Schedule is set aside.

Rule is accordingly disposed of.

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